

OGC-FLN  
154-16-251

Mr. George Cochran Doub  
Assistant Attorney General  
Civil Division  
United States Department of Justice  
Washington, D. C.

Attention: Mr. S. R. Ganser, Chief, Court of Claims Section

Re: John Zavodny v. United States:  
Court of Claims No. 254-52

Dear Sir:

In reply to your letter of 26 June 1956, this is to advise you that this Agency has no means of disputing the finding made by the Commissioner under item 16. We would naturally hope that this might be susceptible to some reduction in a compromise settlement.

Copies of the negatives may be released to the plaintiff if such surrender is a condition of final settlement. However, it is not clear to us whether the negatives are presently in the possession of your department or whether we still retain them. If the latter is the case and you so advise, we will attempt to locate them immediately.

Yours very truly,

John S. Warner  
Deputy General Counsel

OGC:CWP:mz

Distribution:

- Orig. & 1 - Addressee
- 1 - Subject *CWP*
- 1 - Signer
- 1 - OGC Chrono

Note for Zavodny File

In a telephone conversation today,  indicated to me that there was no anticipated operational use of the negatives and that there was no security factor involved which would prevent our release of them.

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## In the United States Court of Claims

No. 254-52

(Filed MAY 24 1956)

JOHN ZAVODNY v. THE UNITED STATES

To the honorable the CHIEF JUDGE AND ASSOCIATE JUDGES OF  
THE UNITED STATES COURT OF CLAIMS:

Pursuant to the order of reference in the above-entitled case, the undersigned Commissioner makes the following report of his findings of fact:

1. The plaintiff, John Zavodny, born in Czechoslovakia, is and has been at all times here material a resident of Chicago, Illinois, and a naturalized citizen of the United States.

2. In 1930 one of plaintiff's brothers in Czechoslovakia sent him a photograph of his birthplace. Plaintiff had the picture enlarged and framed and showed it to a number of his friends who lived in Chicago. These friends asked questions about the picture which gave plaintiff an idea that he could sell similar pictures to his friends of Czechoslovakian origin in Chicago.

3. The plaintiff, a carpenter by trade, is and has been at all times here material an amateur photographer with considerable experience in photography as a hobby. As such he owned 38 photographic negatives constituting aerial views of localities in the area of Turciansky Svaty Martin (also known as Turiec) which is situated in that part of Czechoslovakia known as Slovakia.

The 38 negatives (sometimes hereinafter referred to as the negatives) were acquired by the plaintiff, after negotiations with the Czechoslovakian Government extending over an extended period of time, in the early part of 1939. The negatives were obtained from the Czechoslovakian Ministry of National Defense, through the Ministry of Foreign Affairs, at a cost to the plaintiff of \$490.00.

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4. The negatives were  $4\frac{1}{2}$ " x 7" in size, were contained in glassene envelopes, and were of excellent quality and in very good condition. They were made apparently in 1937 or 1938, by an aerial photographic unit of the Czechoslovakian Air Force. The negatives had a potential useful life of from 10 to 20 years or more in 1942, based upon their condition at that time.

5. The plaintiff obtained the negatives for the purpose of engaging in the business of selling enlarged pictures made from them to persons in the United States of Czechoslovakian birth or descent. Commencing in the fall of 1939, he engaged during spare time or week-ends in the business of selling enlarged pictures made from them to persons residing in the Chicago area.

6. During the period between the fall of 1939 and October 25, 1942, the plaintiff sold to persons in the Chicago area between 275 and 300 enlargements of various sizes, including over 200 of the 20" x 30" size, made from some 24 to 27 of the negatives. He did not sell any enlargements made from the remaining negatives during this period because "I didn't come in contact with the people [from those villages], maybe they don't live here in Chicago".

During the period between the fall of 1939 and October 25, 1942, the plaintiff made a net profit from the sale of enlargements made from the negatives of from \$2,500.00 to \$3,000.00, or approximately \$1,000.00 per year. Most of such net profit was derived from the sale of enlargements 20" x 30" size, in that he sold only a few larger than that size and there was little profit from the sale of smaller sizes.

7. On October 14, 1942, the Office of Strategic Services (hereinafter called OSS) advised the plaintiff by letter signed by Charles Katek that OSS was interested in the plaintiff's aerial pictures of Slovakia, and that OSS believed they would be of service in the war effort. OSS requested that the plaintiff supply it with his negatives of the said pictures and indicate what reimbursement therefor ought to be made to him.

8. On October 25, 1942, in response to its request of October 14, 1942, OSS, through Charles Katek, received from the plaintiff the 38 negatives described in findings 3 and 4, together with a number of photographic prints of various

sizes. All of the negatives were aerial views of localities in Slovakia. The plaintiff made no charge to OSS for the use of the negatives, under an agreement that all of them were to be returned to him. The negatives were in good condition when received by OSS. The materials furnished to OSS by the plaintiff were of value to that organization.

9. In August 1946, the plaintiff by letter requested that OSS return to him all the negatives it had received from him October 25, 1942. On November 27, 1946, Colonel Knox P. Pruden, AGD, Adjutant, replied for the Director, Strategic Services Unit, Office of the Assistant Secretary of War, advising the plaintiff that

\* \* \* an exhaustive investigation of all archives and records fails to disclose any trace of \* \* \* [the 38] negatives; there is no indication whatsoever of their disposition or present whereabouts. We are therefore, of course, unable to carry out the agreement to return the negatives as you now request. We can only assume that your material was taken out of the office for operational use, and was lost, destroyed, or misplaced while being employed in connection with the activities of OSS overseas.

10. Subsequent to November 1946, the plaintiff made continued efforts to obtain reimbursement from the defendant for his 38 negatives. These efforts resulted in the defendant's finding, on May 26, 1947, a complete set of 38 prints constituting aerial views of localities in the area of Turciansky Svätý Martin, Slovakia, by the use of which prints the defendant offered to develop new negatives to be given to the plaintiff. The evidence does not disclose whether or not this set of prints was made from the plaintiff's original 38 negatives.

11. On June 9, 1947, the plaintiff advised the defendant that he was willing to accept new negatives, subject to examination by the plaintiff to determine loss, if any, in intensity or sharpness of detail, with the final acceptance of the new negatives to be subject to a monetary settlement based on the loss, if any, of intensity and sharpness of detail in the new negatives. The defendant replied, on June 17, 1947, that acceptance by the plaintiff of the new negatives would "have to be an unconditional acceptance so far as any claim for loss is concerned". On November 7, 1947, the defendant

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again asserted that if the plaintiff "accepts the pictures, the acceptance would be considered a release of all claims arising out of the loan and loss of his original negatives".

12. On July 14, 1948, the plaintiff requested that the new negatives be forwarded to him, and, on September 23, 1948, such negatives were forwarded to the plaintiff by the defendant with the statement that "acceptance of these negatives by Mr. Zavodny will be considered as a release of all claims arising out of the loss of his original negatives". On November 10, 1948, the plaintiff, through his attorney, advised the defendant that "new prints [had been prepared] from these negatives and \* \* \* such a great loss of clearness and detail [had been found] that he has felt obliged to refuse to accept these negatives in settlement of his claim \* \* \*". The new negatives were returned to the defendant under separate cover.

13. On August 10, 1951, the plaintiff again asked whether the defendant would consider his claim for the loss of his negatives. On August 24, 1951, the Strategic Services Unit, War Department, refused to pay the plaintiff anything for his negatives by advising him that upon demand he would be paid \$1.00 each for small prints and \$2.00 each for larger prints furnished by the plaintiff to the defendant on October 25, 1942, but that the "payment of this amount would be in complete and final settlement of the matter insofar as this office is concerned, since it has no authority to pay any other claim".

14. The evidence establishes that if the plaintiff's 38 negatives had been returned to him by the defendant on November 27, 1946, he would have been able to continue to sell enlargements made from the negatives. Although the plaintiff has not been in possession of his negatives since October 25, 1942, many people have asked the plaintiff when he would have such enlargements for sale, and some persons continued to inquire of the plaintiff to this effect up to the time of the trial of this case.

Large centers of people from the region of Turciansky Svaty Martin are located in Chicago, Illinois, Pittsburgh, Pennsylvania, New York and New Jersey. The plaintiff's sales of enlargements made from his negatives during the period 1939-1942 were limited to the Chicago area. The

plaintiff expected to find persons in other areas to whom he might sell enlargements made from his negatives.

In the plaintiff's opinion, the value of his 38 negatives on November 27, 1946, based on the business which he believes he would have been able to derive from them had they been returned to him by the defendant on that date, was not less than \$7,600.00.

15. The record establishes that photographic negatives in general and the plaintiff's 38 negatives in particular are not articles of commerce generally dealt with in the open market between owners desiring to sell, but not compelled to do so, and purchasers desiring to buy but not compelled to do so. The usual basis for determination of fair market value is, therefore, not available in this instance.

16. The fair and reasonable value of the plaintiff's 38 negatives cannot be determined with mathematical exactitude. Based upon a consideration of all of the relevant facts and circumstances of record, including the nature of the property involved, the condition and quality of the negatives, the cost of obtaining them, the purpose for which they were procured, the uses to which the negatives were put by the plaintiff between 1939 and 1942, the uses to which the negatives would have been put had they been returned to the plaintiff on November 27, 1946, it is found that the fair and reasonable value of the 38 negatives supplied by the plaintiff to the defendant was, on November 27, 1946, approximately \$3,000.00.

17. In addition to the above-mentioned negatives, plaintiff delivered to the Office of Strategic Services 68 photographic prints, 50 of size 4½" x 7" and 7" x 9", and 18 of larger sizes, for which defendant agreed to pay plaintiff at the rate of \$1.00 for the smaller prints and \$2.00 for the larger ones. Plaintiff has not been paid for these prints. This would amount to an additional \$86.00 if it should be determined that entitlement to fair and just compensation has been established.

Respectfully submitted,

PAUL H. McMURRAY,  
*Commissioner.*

U. S. GOVERNMENT PRINTING OFFICE: 1956

1939 - Cost: \$490.-

39 - 42 - 2.5 - 3 in net.

46 - no negs (OSR)

47 - prints found

48 - new negs requested & refused

51 - 1-2 cc. for prints (SSU)

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7/10 Telcom Rate R - ok on  
set up. - new factor is proof (?)  
of income produced -

Querry: where are the negatives?

DEPARTMENT OF JUSTICE

WASHINGTON, D. C.

OFFICIAL BUSINESS

Attention: General Counsel

Central Intelligence Agency  
Washington 25, D.C.

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PENALTY FOR PRIVATE USE TO AVOID  
PAYMENT OF POSTAGE, \$300